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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510–6150
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September 19, 2011

By Electronic Mail and U.S. Mail

The Honorable Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, N E
Washington, DC 20426

Dear Chairman Wellinghoff:

Your letter of August 1, responding to mine of May 17, leaves me no alternative but to reply with an urgent request and more questions. Your statement that the Commission's staff has not conducted "any full studies" of the reliability impact of the rulemaking initiatives of the Environmental Protection Agency (EPA) that were the subject of my earlier letter was, frankly, startling. It was also quite puzzling, given your assurance at last September's Commission meeting that, through its staff or otherwise, the Commission's responsibilities with respect to reliability would be factored into EPA's deliberations.

You provided me, as an attachment to your letter, with a presentation prepared by your staff at least as long ago as October 2010 recommending prudent "next steps." These steps included directing industry openly to "assess the reliability and adequacy impacts of retirement of at-risk units." Your reliability staff (Staff) then outlined a list of elements that such studies should include. Staff also indicated that it would continue to improve its screening methodology with industry cooperation while conducting additional reliability studies. Nearly a full year later, it appears that you have not undertaken or requested any further analysis of reliability impacts. More troubling, you still have not initiated any orderly process to obtain the necessary analysis.

Despite the absence of a process or information beyond Staff's preliminary assessment, last week you testified before the House Subcommittee on Energy and Power that none of the EPA rules should be delayed, including presumably the so-called "Utility MACT" or "Cross State Air Pollution" rules. You appeared to assert that ordinary-course stakeholder processes for addressing reliability – *after* the rules are issued -- could readily substitute for analysis that could and, in my judgment, should be undertaken before these rules go into effect. You alluded

generally to "tools" that you and other regulators may have for protecting reliability in the face of retirements of electric generating capacity as a consequence of the EPA rules, but you did not describe those tools or provide any clear indication of when and how they would be used. In fact, based upon reports from the House subcommittee hearing, it is my understanding that, at present, you have no plans for further analysis of these issues by Staff before the EPA rules go into effect.

Consequently, I must ask you to clarify, as soon as possible, the Commission's plans, if any, for identifying and addressing threats to the nation's bulk power system that may arise from the EPA actions listed in my previous correspondence. In doing so, I ask also that you specifically address the reliability issues connected with the Utility MACT and Cross State Air Pollution rules. Finally, I ask that you and your colleagues, together with the Electric Reliability Organization (ERO) that the Commission has certified under section 215 of the Federal Power Act – the North American Electric Reliability Corporation (NERC) – immediately initiate and complete within six months a formal process that will address these vital reliability issues in a transparent and fair manner. Unless and until such a process comes to an orderly conclusion, I will remain deeply concerned that reliability may be at risk.

Moreover, I do not believe that what can be described as a "consent decree safety valve" can or should substitute for the work that the Commission and NERC should do or the time necessary to do this work before the EPA rules take effect. As I understand it, this so-called "safety valve" would, pursuant to consent decree, enable what amounts to waivers or exceptions for particular plants on a case-by-case basis after the EPA rules are in effect. Because of the number of plants that even the low end of the projected range of retirements would represent, I do not see how such an approach could protect overall reliability, let alone be practically workable, transparent or fair.

Before embracing the "safety valve," the Commission should do the required analysis in concert with NERC. In fact, NERC offered thoughtful recommendations in its *2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential U.S. Environmental Regulation* issued last October at about the time that Staff was presenting to EPA and the Council on Environmental Quality its preliminary assessment. A key recommendation, and one that I believe EPA should follow until the process I have asked you to initiate can be completed, is that "the pace and aggressiveness of these environmental regulations should be adjusted to reflect and consider the overall risk to the bulk power system."

Today's transmission systems do not allow for seamless transfer of power from any point in the country to any other. Instead, as the Commission has pointed out time and again, our electric systems are in regions and sub-regions with singular characteristics. Often reliability in a particular sub-region or local control area comes down to a specific plant or plants or one or more transmission lines. A failure at that level can result in a local outage, even though ample generating capacity may be available across the region or across the nation as a whole. The risks are more acute in areas of the country where generating capacity is located far from load centers. These overall risks, if not properly addressed, can result in local outages becoming ones with even more widespread effects.

Although it is too soon to know, we may have witnessed a dramatic example of this phenomenon just recently. I refer, of course, to the major regional outage across portions of Arizona, Southern California, and Northern Mexico that left millions of customers without power. Similar outages can force critical medical facilities to lose power putting lives at risk; lead to failure of vital public infrastructure; and cause significant economic loss. According to reports, for example, the loss of power to San Diego led to significant disruptions in that city. Whatever its immediate causes, the outage in San Diego and the surrounding regions on September 8 serves as a stark reminder that our electric systems currently are stressed, and every power plant and transmission line makes a singular contribution to overall electric reliability.

In this light, it is good that you, your colleagues and I agree that the reliability of the nation's bulk power system cannot be captured in aggregate figures. High-level estimates, although useful to illustrate the magnitude of the challenge, provide only the most general idea of overall electric system stability and security. As you and your colleagues testified before the House subcommittee on September 14, assessing the risks to reliability requires a far more fine-grained and careful approach.

That is why I was taken aback by your acknowledgment that, despite Staff's projection that EPA's current regulatory agenda would likely cause the widespread retirement of electric generating capacity, the Commission apparently has neither undertaken nor ordered any further study. Your August 1 letter and your congressional testimony this week suggest that the Commission has not attempted and might not attempt to ascertain:

- which generating facilities are likely to retire as a result of the EPA rulemaking agenda in general or the Utility MACT and Cross State Air Pollution rules in particular;
- how such retirements would affect the bulk power system;
- whether such retirements would diminish reliability in particular markets and, if so, which markets;
- whether existing or planned transmission facilities will be adequate to accommodate increased demand as a result of the retirements (and, if so, over what time horizon); and
- what, if anything, the Commission should do or must do as a result to maintain the reliability and security of the nation's bulk power system.

The Commission will conduct a joint inquiry into the San Diego outage with NERC even from the beginning of NERC's analysis of that event. In FERC and NERC's statement announcing that joint inquiry, you said such an inquiry will be "an effective way . . . to protect consumers and ensure the reliability of the bulk power system." NERC's president and chief executive officer said that "[p]artnering brings together the expertise of both organizations, and emphasizes the importance placed on reliability of the bulk power system." In fact, the Commission and NERC have brought their collective experience to bear in other recent inquiries on reliability, such as that into service disruptions in Texas and the Southwest this past winter, jointly preparing a comprehensive report within just six months.

Surely the issue of the cumulative impact of the EPA rulemaking agenda generally, or of the Utility MACT or Cross State Air Pollution rules specifically, deserves no less attention from the

Commission and the ERO. Last week's outage – while rightly a cause of concern – was resolved within less than 24 hours, as I understand it. Its causes will be determined in due course and, I expect, duly addressed. The potential retirement of significant amounts of installed generating capacity – whether considering Staff's preliminary assessment of 81 gigawatts or a lower number along the broad range of predicted retirements – deserves a proportionate response by the Commission and NERC. That response must include serious study of the problem, careful projections, and – above all – an orderly and transparent process to complete this assessment. And let me be clear: establishing such a process, and promptly seeing it through, is the Commission's responsibility.

Although the EPA would bear first-order responsibility if its rules were to degrade reliability, it is the Commission's statutory responsibility under the Federal Power Act to oversee the reliability and security of the nation's bulk power system and to certify the ERO. Thus, the Commission and the ERO also would bear responsibility if they had not been diligent and prompt in assessing the risks posed by EPA's actions before those actions became final.

A "wait-and-see" approach with regard to the impact of these major federal rulemakings is both unacceptable and explicitly contrary to one of the Commission's central obligations. Congress, the executive agencies, and the public should be informed of the risks. And the Commission should take every measure within its power to protect the reliability and security of the nation's bulk power system. I trust that you understand the importance of this responsibility and the consequences of failure to fulfill it. I also respectfully request your detailed answers to the questions attached.

It is regrettable that, given Staff's preliminary analysis of a year ago, a formal process to assess the reliability impact of EPA's actions has not been long since underway. At this late date, time is of the essence. For that reason, I ask you to reply as soon as possible and, in any event, no later than September 30, 2011.

Sincerely,

Lisa Murkowski
Ranking Member

cc: The Honorable Philip Moeller
The Honorable Marc Spitzer
The Honorable John Norris
The Honorable Cheryl LaFleur
Mr. Gerry Cauley, President & CEO, NERC

Questions

Please provide detailed answers to the following questions: [1]

1. Will EPA's rulemaking agenda, as described in my previous correspondence, degrade reliability in any region, sub-region or electric control area of the United States? In addition to answering this question, please state or explain:
   a. the basis for this determination;
   b. your degree of confidence in this determination;
   c. the regions, sub-regions, or electric control areas that will be affected, with a particular focus on transmission "pockets" and cities where generating capacity is at risk;
   d. the impacts on system stability or system recovery in the aftermath of wide scale forced outages (e.g., the recent regional outage in Arizona, Southern California, and Northern Mexico);
   e. the impact on reliability of any change in the balance among different types of generation, particularly during and in the aftermath of forced outages and periods of peak demand; and
   f. the actions that the Commission is undertaking to understand and address these effects.[2]

2. In your view, what is the extent of the Commission's responsibility to ensure the reliability and security of the nation's bulk power system? In this regard, please describe that responsibility and what actions by the Commission it may entail.

3. What process will the Commission undertake to assess the impact on reliability of EPA's rulemaking agenda? With respect to this process, please describe:
   a. the scope of the process;
   b. the projected timeline for any contemplated activities;
   c. the division of responsibility between the Commission, NERC, and any other entity;
   d. any contemplated studies or projections; and
   e. the agencies and officials participating.

4. As a matter of public policy, do you believe that federal regulations should be generally applicable?

5. Do you intend to involve the Commission in the EPA's rulemaking process sufficiently to ensure that EPA's rules, in fact, can be generally applicable without a threat to reliability?

6. If, *de facto*, EPA's rules are less than generally applicable because they require significant exceptions and waivers to meet reliability requirements, please explain the process you believe should apply. Please describe any proposals for such a waiver or

[1] Please provide your answers to these questions and your reply to this letter electronically as well as on paper.
[2] If you are not able to answer this question, please explain what information would be required to answer this question and what steps, if any, the Commission is taking to obtain this information.

exception process that that might serve as a "safety valve" that you may have under review, or that you believe may be under review by EPA or any other Executive Agency, for permitting certain power plants to operate under the EPA rules until mitigation measures are put in place to safeguard reliability considerations. Please detail the elements of such a process for providing flexibility or targeted and discrete exceptions or waivers. If such a process would include the use of consent decrees entered in judicial proceedings, please explain how such a process might operate.

7. Please provide any estimate that you or any Commissioner or Commission employee may have developed with respect to the number of generating units that could qualify for such flexibility or targeted and discrete exceptions or waivers.

8. If you expect that completing a reliability assessment of the cumulative impact of EPA's rulemaking agenda in general – or of the Utility MACT or Cross State Air Pollution rules in particular – will require more than six months, please explain in detail the objectives of the assessment, its methodology, and the time necessary to complete each step. In addition, please explain why it would be infeasible to release an assessment within six months' time.

9. If the Commission is not undertaking such a process, and has no plans to do so, please either:
    - affirm that EPA's rulemaking agenda will not materially degrade reliability in any location within the United States; or,
    - explain how the Commission will carry out its statutory obligations with respect to reliability and security in the absence of information regarding expected material degradations to reliability.